ENTERPRISE AND CULTURE COMMITTEE

Tuesday 17 January 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE
1st Meeting 2006, Session 2

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)
Richard Baker (North East Scotland) (Lab)
*Susan Deacon (Edinburgh East and Musselburgh) (Lab)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Karen Gillon (Clydesdale) (Lab)
Michael Matheson (Central Scotland) (SNP)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)
Donald Gorrie (Central Scotland) (LD)
Fiona Hyslop (Lothians) (SNP)
Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Ind)

*attended

THE FOLLOWING ALSO ATTENDED:

Nicholas Grier (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Tom Adams (Glasgow City Council)
Alan Adie (Adie Financial Solutions Ltd)
Pauline Allan (City of Edinburgh Council)
Jemiel Benison (City of Edinburgh Council)
Margaret Burgess (Citizens Advice Scotland)
Bryce Findlay (Findlay Hamilton)
Jim Freer
Vida Gow (Citizens Advice and Rights Fife)
Bryan Jackson (PKF (UK) LLP)
Ian Johnston (Henderson Loggie)
Shona Maxwell (Henderson Loggie)
Patricia Sproul (Highland Council)
Adrian Stalker (Shelter Scotland)
Brenda Tamburrini (Glasgow Easterhouse Citizens Advice Bureau)
Euan Wallace
Ann Wood (Stirling Park LLP)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 2

Scottish Parliament

Enterprise and Culture Committee

Tuesday 17 January 2006

[THE CONVENER *opened the meeting at 14:03*]

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

The Convener (Alex Neil): First, there are two or three housekeeping matters to mention. I have received apologies from Richard Baker MSP, and Karen Gillon MSP hopes to join us at about 2.30. I ask everyone in the room to switch off—not just switch to silent—their mobile phones.

I extend a special welcome to Nicholas Grier, whom the committee has appointed as our special adviser for the duration of our consideration of the Bankruptcy and Diligence etc (Scotland) Bill. Advisers are not supposed to speak in the committee unless they are invited to do so, therefore I formally issue an open invitation to Nicholas to participate and intervene whenever he likes.

It would be helpful if we went round the table and introduced ourselves and said which organisations or companies we represent. If witnesses want to tell us of their particular speciality, that is always helpful as well. We have tried to tilt the name plates so that I can read everyone's name as they speak. We have a list of topics that we want to cover in this first session. If we start by going round the table, we will get an idea of who all is here.

I am Alex Neil MSP, and I am convener of the Enterprise and Culture Committee.

Nicholas Grier (Adviser): I work at Napier University and I specialise in business and corporate law.

Christine May (Central Fife) (Lab): I am a member of the Scottish Parliament and deputy convener of the Enterprise and Culture Committee.

Vida Gow (Citizens Advice and Rights Fife): I am a money adviser with Citizens Advice and Rights Fife.

Margaret Burgess (Citizens Advice Scotland): I am a money adviser and manager of East Ayrshire citizens advice bureau. I represent Citizens Advice Scotland.

Brenda Tamburrini (Glasgow Easterhouse Citizens Advice Bureau): I am a money advice worker from Easterhouse citizens advice bureau in Glasgow.

Shona Maxwell (Henderson Loggie): I work in personal insolvency for Henderson Loggie chartered accountants.

Ian Johnston (Henderson Loggie): I am a partner in Henderson Loggie chartered accountants in Dundee and a licensed insolvency practitioner.

Alan Adie (Adie Financial Solutions Ltd): I am a licensed insolvency practitioner in Aberdeen. I lecture students sitting personal insolvency exams.

Jemiel Benison (City of Edinburgh Council): I am the development officer at the City of Edinburgh Council advice shop. I have a background in money advice and credit union development.

Pauline Allan (City of Edinburgh Council): I am the advisory services manager at the City of Edinburgh Council. I am responsible for a team of 10 debt advisers who work across the city with our voluntary sector partners in the debt advice partnership.

Ann Wood (Stirling Park LLP): I am managing partner for Stirling Park, which is Scotland's leading revenue management and enforcement company.

Patricia Sproul (Highland Council): I am the money advice manager at Highland Council.

Adrian Stalker (Shelter Scotland): I am the principal solicitor of Shelter Scotland.

Shiona Baird (North East Scotland) (Green): I am a member of the Enterprise and Culture Committee.

Bryce Findlay (Findlay Hamilton): I am an insolvency practitioner in Findlay Hamilton in Glasgow.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I am a member of the Enterprise and Culture Committee.

Bryan Jackson (PKF (UK) LLP): I am a partner in PKF chartered accountants and a practitioner in licensed insolvency. I have practised in personal insolvency for 26 years.

Murdo Fraser (Mid Scotland and Fife) (Con): I am a member of the committee.

The Convener: We have with us two reporters who take a record of everything that is said, as well as the senior assistant clerk, Douglas Thornton.

The purpose of this round table is to help the committee to identify the key issues that will need

to be addressed during the passage of the bill. We felt that, given the complexity and size of the bill, it would be useful right at the beginning to hear the point of view of practitioners and those who have been at the receiving end of bankruptcy proceedings, to help us to grapple with the key issues that will need to be addressed.

It might be useful if I outline briefly the process that a bill goes through in the Scottish Parliament. The committees have a particularly important role in legislation—more so than they do at Westminster—and we conduct pre-legislative scrutiny. After today, the evidence that we take will be much more formal. We will issue a request for written evidence and we will receive oral evidence on all four aspects of the bill. At the end of that, we will produce a report, which I hope will identify any key issues. Our report will be considered by the full Parliament at first reading—stage 1—which is when it is decided whether to approve the bill in principle.

We then move to stage 2. Unlike at Westminster, here stage 2 is taken entirely in the committee. Only the committee members vote at stage 2, but any of the 129 members can lodge an amendment and speak to it—others may come to speak against amendments. The committee members vote on the amendments.

At the completion of stage 2, the bill, as amended, goes back to the floor of the chamber for the final, third reading—stage 3—when the i's are dotted, the t's are crossed and any final amendments are made. Once that is completed, which usually takes a full day, sometimes more—in this case it might take more—the bill goes to the Queen for royal assent.

As you can see, the committee has a very important role in the process, which is why we are being very careful. It is important to get the bill right and to ensure that it fulfils our needs not just for next year but for the next 20 to 30 years.

We have circulated a list of subject areas in which we believe either that there are concerns or that there needs to be discussion. It would probably be helpful if we went through those individually rather than trying to cover them all at once, so that we can pull it all together. If someone wants to speak, the easiest thing would be to press the microphone button, put your hand up or give me an indication that you want to speak. In fact, the clerk has just—very discreetly—informed me that you should indicate by hand if you want to speak. I will try to facilitate the participation of everyone around the table—members as well as practitioners.

The first subject is the duration of bankruptcy—

Christine May: Before we start, could I make a request? Like some other members, I have little technical expertise in this area, so I still struggle with abbreviations and legal terminology even though we have been provided with definitions. When people are discussing technical matters, it would be helpful if they could remind us of what they are and what they mean, at least for the first wee bit.

The Convener: Obviously, our adviser, Nicholas Grier, will come in with comments from time to time.

The first subject is the duration of bankruptcy and the reduction in the period of discharge of debtors from three years to one year.

Bryan Jackson: My understanding is that the proposal was made to try to encourage entrepreneurs and, partly or wholly, because it has already been introduced in England. There are different statistics, but my experience in the past couple of years is that the reality of personal insolvency is that 98 per cent of trust deeds relate to consumer debt; they do not relate to people in business. Most people who operate in business now tend to do so via a corporate entity or limited company. There are not many sole traders any more.

If most personal insolvency comes about because of consumer debt, to discharge a bankruptcy after only 12 months gives totally the wrong message. I do not understand the thought process behind shortening the period of insolvency to 12 months. I am told that it is to encourage people to be entrepreneurs, but if we break down the numbers and consider, say, the number of sole traders who have been made bankrupt in the past 12 months, we see that we are talking about a handful of people in the whole of Scotland.

I know that the provision has been introduced in England and that the statistics for the first year since it was introduced are that bankruptcies have gone up by 27 per cent. I expect that the same will happen in Scotland. However, my real concern is about the message that the proposals give out in a society in which, as we all know, credit is given out and people take credit far too easily. Shortening the period of discharge will just exacerbate the situation.

Pauline Allan: We have no particular view on the length of the period of bankruptcy, so we are not so concerned about it being shortened to 12 months. However, we believe that the period for income payments and for the discharge should be synchronised. We understand that the discharge will be reduced to a year but that income payments could be asked for for three years. That does not seem to make sense.

Like Bryan Jackson, we also see personal insolvencies. Usually with a personal insolvency,

no offers or voluntary contribution have to be made. As a result, reducing the discharge to one year will not really have that much of an effect on a personal bankruptcy. However, if the proposals are intended to cover entrepreneurs, if they are discharged after one year but their income payments go on for three years, they will carry over the debt and will not get the chance to make a fresh start.

We would prefer it if the period for making income payments was synchronised with the period of bankruptcy, whatever that will be.

14:15

The Convener: Do you have a view on whether it should be one, two or three years?

Pauline Allan: We do not have a particular view on that, although I can understand Bryan Jackson's thoughts on having a one-year limit for some personal insolvencies. We are not quite as concerned about that as we are about synchronising the payment and the discharge.

Ian Johnston: I support what Bryan Jackson said. My experience on the other side of the country is exactly the same; more than 90 per cent of the cases that I am involved in relate to personal debt. It seems to me that we have moved from having responsible lending and responsible borrowing to the current situation, in which there is irresponsible lending and irresponsible borrowing. That is the background to the situation and is an issue that needs to be addressed.

Christine May: I have two questions, the first of which relates to consumer debt. In your experience, how many of the cases with three-year discharge are repeat bankrupts? How many come back to you after four or five years and say, "I'm bankrupt again"?

My second question relates to entrepreneurs. If a bankrupt is discharged after a year and can go back to trading, is not there an argument that they will be in a better position to repay the debt than they would be if the discharge did not come about until the debt was repaid?

Bryan Jackson: I do not want to hog the conversation too much, but I will answer those questions. I would say that very few of the cases of which I have experience involve repeat bankruptcies.

Christine May: After three years?

Bryan Jackson: Yes, there are very few, although there will be the odd person for whom bankruptcy hits again.

On discharge after a year, if someone is made technically bankrupt, there is nothing to stop them being self-employed or an employee the next day, although they are obliged to make a contribution, so the discharge does not really affect that. To some extent, I agree with what Pauline Allan said, because I think that the payment and the discharge should be synchronised. It makes sense for the two things to last for the same period. When I consider how to balance the rights of debtors and the rights of creditors, I think that three years is a fair period. Twelve months is too short and five years is too long. What we have at the moment is a good balance.

Bryce Findlay: I think that repeat trustees and repeat sequestrations will become more and more common. They are already becoming more common. However, I think that we are misguided in thinking that people will contribute for a three-year period although they will be discharged after only 12 months. There are various ways of ensuring that there is no requirement to make a contribution after the 12 months have ended.

The Convener: You are making a distinction between personal debt and corporate bankruptcy. Is it wise or feasible to make a distinction in the discharge period between corporate and personal bankruptcy?

Bryce Findlay: There is no discharge period with a corporate bankruptcy. There is no personal entity in the corporate situation.

The Convener: So it is just for small traders.

Bryce Findlay: Yes.

The Convener: So in essence there are two issues. One is the period of discharge and the other is synchronisation, irrespective of the period involved. Do any of the witnesses dissent from the views that have been expressed? Are those general views?

Christine May: I would like to get a feel for people's view on whether a 12-month discharge period will lead to more personal insolvencies because of consumer debt.

Margaret Burgess: I do not necessarily agree with all that has been said, but it does make sense to synchronise the period, particularly for the debtors with whom we deal. They are at the bottom end of the market and do not have assets or income, and a synchronised period allows them to see an end to their problems. It would be difficult for those debtors to understand the difference between the discharge and the obligation to carry on paying for a further two years or to make a contribution. It is sensible to synchronise the two, but I am not necessarily saying that we should carry on with the three-year period.

The Convener: Is Citizens Advice Scotland in favour of a reduction to one year?

Margaret Burgess: Yes. In principle, we are in favour of reducing the period for bankruptcy.

Bryce Findlay: Where there is no income and no assets, the three-year restriction does not particularly affect people.

The Convener: What effect does it have on them?

Margaret Burgess: I mentioned people with no income and no assets, but we also deal with many people who have low incomes and small amounts of disposable income who make contributions.

Bryce Findlay: But contributions are normally set at a reasonable level.

Margaret Burgess: The period can be reduced in such circumstances. If the two periods are the same length, the process will be better understood, and it is important that individuals understand it.

The Convener: There is universal agreement on the principle of synchronisation, but there is a slight variation in opinions on the discharge period.

Susan Deacon: Like Bryan Jackson, I understand that much of the thinking behind the provision was aimed at encouraging entrepreneurs. I wondered whether anyone around the table—or, for that matter, fellow committee members, from any information that they are party to—can share with us any knowledge or insights about the extent to which discharge periods are currently a material factor in encouraging or discouraging people to become entrepreneurs. Is that question outwith the scope of the experience of most people around the table?

Nicholas Grier: Any sensible entrepreneur will go south of the border if we continue to have a period of three years in Scotland and one year in England.

Bryce Findlay: Surely any sensible entrepreneur will simply form a limited company.

Nicholas Grier: Indeed. That would be a much better idea.

The Convener: Such comments fill us with confidence.

Bryan Jackson: Is not having to move down to England a high price to pay?

The Convener: Nicholas Grier may be able to help me with a question. Obviously, the English law was changed not too long ago. Is there any evidence that the new rules in England have had an impact on entrepreunership?

Nicholas Grier: I understand that there is exactly the same amount of business in England. Some 90 per cent of bankrupts have consumer debts. The Enterprise Act 2002 has been in force for only two years, so there is not yet enough information for us to know whether it is stimulating enterprise. Peter Mandelson, who introduced the act, seems to think that it will stimulate enterprise, but it is too early to say.

The Convener: We all know that Peter Mandelson gets his predictions right.

The feedback that we have received has been useful and a number of points have been made. Does anybody want to make any other points before we move on?

Bryan Jackson: One reason for reducing the period to 12 months is to try to take away the stigma of being made bankrupt and to allow people to move on. I understand that, but we should consider the history of bankruptcy through the years. There were debtors' prisons and, until 1986, when the legislation was changed, people were unable to get a discharge. Then, the period became three years, which is a better balance, but to go even further—from three years to 12 months—would be to get things out of balance and to make things too soft and easy.

The Convener: Okay. I think that people have registered that point.

Christine May: It occurs to me that none of our colleagues around the table has commented on any differences that there might be between here and south of the border and whether a change would make any difference.

Nicholas Grier: We thought that it was too early to talk about that.

The Convener: Okay. We will move on to the future role of trust deeds. Does anyone want to volunteer to kick off the discussion of that issue? Clearly, it is the talk of the steamie.

Shona Maxwell: Currently, trust deeds are a good option for many people for whom there is no route to bankruptcy and who are not apparently insolvent. The option gives them the chance to manage their debts in a reasonable fashion and to give a return to creditors. With trust deeds, there is no drain on the public purse because the debtor pays any fees that are incurred. It would be a shame if trust deeds were no longer a door that was open to people who are in debt. Many people who have assets that can be realised and who can afford a good contribution every month sign trust deeds. Doing so gives them the light at the end of the tunnel that they desperately need. Such people may not be able to get into bankruptcy. What would happen to them?

The Convener: So you are basically saying that trust deeds still have a role to play.

Shona Maxwell: Yes. They have a major role to play.

The Convener: People are indicating that they agree with that. Do people want to make any other comments on the future of trust deeds?

Alan Adie: The statistics in the report to the Accountant in Bankruptcy indicate the return to creditors on trust deeds. In 2005, there was an average dividend return of 22.2p in the pound, which was slightly more than that for sequestrations. Scottish Executive officials have made much play of the low return to creditors and why trust deeds must therefore be considerably reformed. It strikes me that, as Shona Maxwell said, there is an alternative. Only two procedures in Scotland give debt relief: sequestrations and trust deeds. The apparent insolvency test is too tight. I know that we will be talking about that in a minute. However, those who do not pass that test can get into a trust deed, get their relief from debt, make their contribution and, indeed, realise equity from their house, sometimes without having to sell the house, so that the creditors get the benefit of both assets and income.

Most money advisers in the land will say that the protected trust deed is a valuable tool in their armoury for solving clients' problems. We are giving a return to creditors, which belies the statistics that are being used to justify the proposed reform that the Executive is considering. We do not know what is behind the regulations under the bill, which, unfortunately, will not be subject to the affirmative procedure. With trust deeds we have a procedure that gives a return to creditors and relief to the debtor and which does not cost the Exchequer a penny.

The Convener: That is helpful.

Bryan Jackson: I agree with everything that Alan Adie said. We hear murmuring in the background about the problem of trust deeds not being regulated and about the public perception of them. I have difficulty with that because trust deeds are heavily regulated and are carried out by licensed insolvency practitioners. The Institute of Chartered Accountants of Scotland and the Accountant in Bankruptcy are heavily involved in them. The statement of insolvency practice means that we cannot take on a trust deed unless we believe that we will be able to pay a dividend. The amount of dividends is going up, as is the volume of cases in which we pay a dividend.

We do not know what the proposed reforms will be, if any, but we hear murmurings that suggest that there will be material changes to trust deeds. We do not know why there should be changes. Trust deeds appear to be working well and to have created over a number of years a good balance in working for the interests of the debtor and the creditor. We have been unable to respond properly to any proposals because I understand that they have not yet been made, but I certainly endorse everything that Alan Adie said about the matter.

The Convener: Bryce, do you want to comment on that? I saw you shaking your head a wee bit.

Bryce Findlay: To a large extent, I would probably welcome increased monitoring of trust deeds by the Accountant in Bankruptcy, if only to protect our position as insolvency practitioners.

The Convener: Perhaps you will expand on that in your written evidence.

Alan Adie: I would have no objection to the introduction of a higher test of a minimum dividend, or something like that. However, I would resist overregulation by the Accountant in Bankruptcy, who will be given so much power and influence and will have so many additional responsibilities under the bill that I wonder what sort of staffing he or she will need to deal with everything.

As I said, I would not object to a proposal on a minimum dividend. However, I am concerned about the procedure for tampering with trust deeds and about how the proposals will be put to creditors and how they will either object or accede to trust deeds.

The Convener: Are there any other comments on trust deeds?

Bryce Findlay: I would be very careful about the question of the minimum dividend in trust deeds. Currently, people cannot enter apparent insolvency, and we could be entering a situation in which they cannot even enter trust deeds up to a certain level. We might end up saying that, if someone has sufficient income, they can enter a trust deed but if they do not have sufficient income, they cannot. We are being—

14:30

The Convener: So you do not agree with the minimum—

Bryce Findlay: That would prejudice a whole section of the community.

Bryan Jackson: I agree. It would be difficult to have a minimum dividend. I can understand the thinking behind that, but all situations are different, and we have to be careful about people's rights and about access. The other advantage of the way in which trust deeds currently operate is that it saves court time, because they do not involve a court process, unlike sequestration. That is a good advantage.

Christine May: Perhaps I have got this wrong—if so, I am sure that the witnesses will tell me. Trust deeds are used when there is something that can be paid back, and when there is therefore

no need for bankruptcy or sequestration. Some payment has to be made. Arguably, a minimum of some sort can be set. Whether that is a percentage or something else, you cannot simply say that there cannot be a minimum.

Bryce Findlay: It would be difficult to define such a minimum, given the level of debt involved. Ten per cent of £80,000 is £8,000, and 10 per cent of £30,000 is £3,000.

Bryan Jackson: According to our regulations, we do not take on a trust deed unless we foresee that we will be able to pay a dividend. However, the dividend is not quantified because it is so difficult to do so, particularly at the beginning. It depends, for example, on the individual being able to maintain the voluntary contribution. Sometimes, people lose their employment, and other things happen outwith their control. Sometimes, the value of the assets is not known—that might apply to the equity on a house, for example. That is why there is currently no set minimum. The principle is that there has to be enough to foresee that there will be a dividend.

The Convener: I think that we have probably covered that point. Let us move on to our third topic, which is the pursuit of vulnerable debtors by aggressive creditors. I imagine that the CAS representatives will have a lot to say about that.

Brenda Tamburrini: I was really concerned about that area when I first read through the bill. As soon as I received it, I wanted to know what was in it for our clients, who are basically no-income, no-assets debtors. I do not like that terminology, although it helps to label people in such a way for discussion purposes. However, it includes people on benefits and people with disabilities. CAS has done some research into the category of no-income, no-assets debtors. We have discovered that two thirds of the people concerned are on benefits. The remaining third are in employment—they are out working and trying to improve their choices, and they are currently excluded from entering trust deeds.

There is no minimum, but I believe that people have to have a surplus of more than £100 a month, which excludes that option for many of our clients. They have no such surplus, so they cannot enter a trust deed; they have no income to enter a debt arrangement; and they cannot go for insolvency as no one will issue a charge for payment. Our concern is that, as the convener said, the bill is intended to last 20 or 30 years, so it is important that we consider what we can do for people with no income and no assets.

The Convener: Will you give us some ideas about that? You might wish to mention some just now, and include the issue in your written evidence.

Brenda Tamburrini: We were thinking that, if someone cannot enter a DA scheme, a route could be offered for apparent insolvency.

The Convener: If you could give us more information about that in your written evidence, that would be helpful.

Margaret Burgess: We already have evidence on the debt arrangement scheme. Unless we get that right, vulnerable debtors, whether they are on benefits or a low income, will be left out. Currently, as Brenda Tamburrini said, they are excluded from trust deeds, and a lot of them do not want to go for bankruptcy or apparent insolvency in any case. They want to be able to pay off some of their debts and to get some form of debt relief, but the debt arrangement scheme in its current form does not meet those people's needs. Neither the bankruptcy legislation nor the debt arrangement scheme in its current form will assist people who are being pursued aggressively by creditors. I accept that, ultimately, court action might not be taken, but creditors are pursuing people and giving them stress in their lives that they do not need. We must consider the debt arrangement scheme as well as the bankruptcy legislation.

The Convener: If we think that another piece of legislation needs to be looked at, we are perfectly free to recommend that in our stage 1 report.

Patricia Sproul: I have raised the topic of the pursuit of clients because of the innumerable phone calls that mainstream lenders make, sometimes on a daily basis, even when money advisers are acting for the debtor. I did so to highlight the plight of people who have no sure route; they cannot become bankrupt because they have no proof of apparent insolvency—they do not have enough income.

Remedies exist: money advisers refer such cases to the Office of Fair Trading and raise them with the trading standards office in the creditor's area because the practices that I described are clearly against the OFT's guidance on debt collection. Although our main concern is for our clients, we are also concerned that money advisers in the free sector are overstretched, as making complaints on behalf of clients adds to the work that we have to do in preparing cases. I emphasise the need for surety for the client, a clear way forward and some form of resolution.

The Convener: Again, the more evidence that you give us in your submission, the better.

Ann Wood: Obviously, at Stirling Park, we work primarily on the collection of local government taxation on behalf of our client local authorities—we represent 13 of the country's 32 local authorities. On aggressive pursuit by creditors, the committee may be interested to learn that more and more of our clients are now working with us at

a much earlier stage to identify the vulnerable people who have no assets, as opposed to those whom councils can pursue—people with assets who are unwilling to pay. For Stirling Park's clients now, it is firmly not the case that aggressive behaviour on the part of local authorities takes place. Our objective is to purse only those who have the assets and ability to pay.

People who are in receipt of benefits or income support are taken out of the recovery process and given the appropriate money advice through money advisers, welfare rights advisers or citizens advice bureaux so that alternative opportunities can be taken up on their behalf. Certainly, our work on behalf of our clients can be much more sophisticated given our ability to use the intelligence that is now readily available to us. We can identify those who should pay and who are capable of paying and those who simply do not have the assets to pay—we are equally concerned about them. The intelligence that is now out there allows us to be much more sophisticated and pragmatic in our approach. We encourage our clients to take that view and that approach.

Brenda Tamburrini: That is often the problem, however. People are not being advised about the route that they can go down. For example, in a case involving council tax arrears, Glasgow City Council has petitioned for sequestration when it could have used other readily available routes. We have a client who had not claimed benefits for 10 years—mental health issues were involved. Glasgow City Council decided to pursue a sequestration against her for unpaid council tax. The client is now on benefits and deductions could quite easily have been made, but that is not happening.

The Convener: What is the solution?

Brenda Tamburrini: The solution is that, rather than go straight to sequestration, councils should first undertake the proper diligence. Councils are aware that they can make direct deductions.

The Convener: Should that be a statutory obligation?

Brenda Tamburrini: Yes.

Christine May: If I may, convener, I will add a comment. In my time in local government, I had considerable experience of the issue. Frankly, quite a lot of this work is not part of councils' front-line work; it is more of a back-room function. However, they get caught up in the wish to see more money put into the front line. The issue is as important for councils as it is for the vulnerable clients about whom we are speaking.

Bryan Jackson: As someone who advises people on their debt problems, I agree with what everybody has said. The gist is that there should be an option for people who cannot contribute towards their debts. They should not be left in limbo for years and harassed—there is no point in that for anybody. I understand that the bill is silent on the matter. Provision needs to be made for people in that situation, although that may depend on the changes that may be made to apparent insolvency.

Brenda Tamburrini: We are aware that there is legislation on harassment and so on. As was mentioned, cases can be referred to the Office of Fair Trading. However, the trouble tends to be that the debts are passed among various collectors, so even if the person gets the debt sorted out with one collector, it can be passed on to someone else.

The Convener: Your key suggestion is that a hierarchy should be built into the statute—it should be necessary to do this before doing that, and to ensure that the ultimate step is not taken before the other approaches have been attempted. That is a reasonable suggestion.

As there are no other comments on that issue, we will move on to debt advice information from creditors.

Adrian Stalker looked as though he was about to indicate that he wanted to speak.

Adrian Stalker: No.

Shona Maxwell: It is important that the debt advice that people are given by creditors is not a big pile of information leaflets. They have probably had stuff through their door for years and they will have passed the stage of reading it. They need something that is very simple and tells them exactly what to do. They should be able to open the envelope and see a sheet that indicates that they need to do this or that. They should not be sent a thick booklet when, by that stage, they are sick of getting stuff through the post.

The Convener: Perhaps that is not something that should be provided for in statute, but there should be a code of practice on how such matters are best handled.

Shona Maxwell: The information must be provided in terms that the person can read and understand.

The Convener: It should be short, sharp, simple and straightforward.

Shona Maxwell: Yes.

Margaret Burgess: We must be clear that debt advice and information from creditors should be about all the person's debts. Often the information that a creditor gives is based on the debt that is owed to them. The client—the debtor—may go down that route but, as we heard from the witnesses from Stirling Park, they might not have

taken into account all their other debts and the arrangements that are in place. If consideration is being given only to council tax debt and not to all the other debts that a person has, the process will not work. The issue is about getting advice from the money advice sector on all the debts. That is what money advisers do: they look at all the debts that a client has and work out with the client which debts are a priority. Advice from a creditor is generally about the debt that is owed to the creditor. That is not always in the best interests of the debtor, as they might go down a route that will put them in further difficulties at a later stage.

Christine May: How do we ensure that it is in the best interests of individual creditors to give the sort of advice that may mean that they get back less of the debt? The creditor's objective is for the whole debt to be paid. Often when people with multiple debts pay one creditor, they cannot pay the others. I would be interested to hear the practitioners' views on how we might phrase a provision that would give us the best of all possible worlds.

The Convener: It would perhaps be helpful if witnesses could give the matter some thought and provide us with written evidence on that point. Our job is to try to find solutions to problems and we rely on you to give us some proposals on what needs to be done.

Patricia Sproul: I will throw something into the pot. A lot of clients who are quite far down the road with debt issues do not open their mail. We send out booklets to people, but not opening mail is a classic symptom. We are sometimes handed a bag of unopened mail. Leaflets will not be effective with vulnerable people who have mental health issues.

The Convener: That emphasises the need for early intervention, which Ann Wood mentioned.

Ann Wood: I concur. That is exactly why we—along with our clients—invest quite heavily in being intelligent and much more sophisticated up front. We should be able to identify the most vulnerable in society prior to the debts arising in the first place. We should identify them before they have the opportunity to bury their head in the sand and hope that the problem goes away, because by that time the damage is done. We need to use the intelligence that is available to us at a much earlier stage to identify the best approach, the best means of communication and the best help, support and advice that those people can be given.

14:45

Jemiel Benison: Pat Sproul has covered most of what I wanted to say. It is one thing to have debt advice and information available; it is another to get it read. People in vulnerable positions tend to put the brown envelopes on the mantelpiece, and they do not look at them again. That problem was expressed originally in the report "Evaluation of the Debtors (Scotland) Act 1987: Overview", which was published in 1999. It was recognised in that document that the system relied on the debtor exercising their rights and having information; however, if the debtor will not access that information, how can they be made to do so? That cannot be done. I would like more consideration to be given to automatic protection against, for example, undue harshness, rather than things that require the debtor to be proactive.

The Convener: Do we not need to tackle the problem from both ends? We need the early intervention at one end, but we also need—

Jemiel Benison: I am not against education in any sense or against information being available, but there must be a good backstop of automatic protections.

Susan Deacon: I am keen to utilise the opportunity that is given by having the range of people that we have here today to develop more of an understanding of the human realities of the stage in the process that we are talking about. The point that has been made about people not opening their mail makes perfect sense to me, as a non-expert in this area. To me, it is common sense that a lot of people might be at that stage. I would be grateful for any more information that people can share about the realities that are faced by folk in the circumstances that we are talking about and what they might respond to.

I am surprised that the issues have not yet been raised of resources and capacity in money advice at a community level. I presume that, if we get this right, we will stimulate demand in relation to people looking for advice and assistance. I know that that takes us into issues that are not obviously related to the bill, but they are related issues that are very much part of the discussion. If we manage to get the information to folk—whether through a bit of paper or whatever—and if people are going to seek advice and assistance, that needs to be there for them. I would have thought that people would want to touch on that area. Is this the right place for that discussion?

The Convener: Absolutely. What about the view from Citizens Advice Scotland? Brenda Tamburrini must have some comment about the matter.

Brenda Tamburrini: Are you talking about the fact that there are not many accredited money advisers at the moment for the DA scheme? Is that what has encouraged you to ask that question?

Susan Deacon: You tell me. That is why I am asking.

Brenda Tamburrini: There has been a problem with people becoming accredited as money advisers, which is required for the DA scheme. When we considered the DA scheme originally, there was not much in it for our clients, who have no income and no assets. Therefore, there was not much incentive for our money advisers to go on yet another scheme. We are underresourced at the moment and are working to very tight budgets. If there was something in the DA scheme that we thought would benefit our clients, we would be more keen to take part in the accreditation process. Some amendments have been made to the DA scheme, but it still excludes a lot of people. Between debt arrangement and bankruptcy, there is still no option for a lot of clients who, as I said earlier, are in limbo. If the bill is amended to take into account people with no income and no assets, that will free up a lot of the time that we spend at the moment constantly writing to debt collectors.

The Convener: Can I just boil that down a bit? I understand that the vast bulk of people who are in debt are individuals rather than corporations or businesses—as has been stated—and that the vast bulk of their debt is owed to local authorities.

Margaret Burgess: No—people are being pursued by local authorities.

Brenda Tamburrini: But 75 per cent of our clients have consumer debt.

The Convener: The vast bulk is consumer debt. Right. Fine.

Pauline Allan: We have a team of 12 working throughout Edinburgh, although only 10 are in post at the moment. There is no postcode area in Edinburgh that does not have debt. On average, the debt advisors take on 250 to 300 debt cases a month. The majority of those debtors have three or more creditors and they often have council debt—rent or council tax, or both. We have clients who cannot pay their social care bills. However, the bulk of the debt is consumer debt.

Despite the popular view that most debtors try to get away with not paying their debts, our clients want to pay—they want to take an option that will get them back on their feet again. However, most of them come to us only at the very last stage, whether because they have received a letter threatening eviction, a sheriff officer's letter or a letter from our colleagues in England who do not know the Scottish legislation and who say, "We're sending in a bailiff." That triggers clients to come to us. We offer education and we try to give talks. Information is already there for clients, but people always wait until the last minute because they think that they will manage the next week or the next month.

Patricia Sproul: Clients often respond to someone on the other end of a phone who shows sympathy and does not shout at them or terrify them. That is quite a good way for creditors to give information when someone has sought money advice because they are in trouble. It is about the assessment of the people on the other end of the phone. Many of our clients like door-to-door collectors, such as Provident and Greenwood, because our clients perceive that such collectors will come and go with them a bit and that they can be friendlier. They will pay those people in preference to someone that they perceive as aggressive. It is about creditors getting the information over to clients, and word of mouth works well if it is delivered correctly.

On the resource issue, clients need the surety. The work that money advisers put into trying to keep track of creditors, writing to creditors and answering calls from anxious clients is often duplicated. It would free up resources if there was a clearer way forward for clients and money advisers.

The Convener: Does Susan Deacon feel that she has had a satisfactory answer to her question?

Susan Deacon: I am sure that we will return to those issues. I wanted to raise them while we were on the subject.

Christine May: There is some anecdotal evidence that text messages and mobile phone contact are more satisfactory and more likely to get results than standard telephone contact, e-mails and so on.

Ann Wood: It is certainly the case that the personal approach is much better than written material—we find that with the telephone negotiations that we enter into. Before a sheriff officer appears on the doorstep, we use field liaison officers, who will sit down with—or stand on the doorstep with—the debtor to work through the challenges, to see what the options are and to establish whether the debtor is capable of paying and whether they want to enter into payment arrangements and so on. If that is the only route open to them, the arrangements are escalated through the appropriate departments in the authorities. That is a much more personal approach, but it is resource heavy. The more people who firms such as Stirling Park pass through that money advice route, the more the infrastructure for accredited money advisers needs to be in place.

The most laudable aspect of the debt arrangement scheme was the planned infrastructure that was supposed to make debt advice easily and readily available to all and sundry who required the service. However, more than a year on, that infrastructure is simply not there. We cannot fault the people who have tried

to establish the service, but debtors have not yet been able to access the opportunities that it was to provide and the process has never been marketed as being available.

Margaret Burgess: I do not want to get too hung up on the issue of accredited and approved money advisers. Every local authority area has money advisers who are not approved under the debt arrangement scheme. We all hoped that the scheme would provide a solution for many of our clients, whether they are on a low income or have a reasonable amount of disposable income. Many advisers have not come forward for approval simply because they do not consider the scheme to be an appropriate route for their client group. If we get the details of the scheme and the changes to the bankruptcy legislation right, all the money advisers who are working heads down from 9 am to 5 pm or later might put themselves forward for approval.

I do not want to give the committee or anyone else in Scotland the impression that there are only 50 or so money advisers in the country. That is not the case. There are many hundreds of money advisers out there; although they might not all be approved under the debt arrangement scheme, they exist and, in fact, there is business for many more of them. I certainly support people coming forward for approval, because I hope that the scheme will change.

The Convener: We have pretty well exhausted that issue. I think that the evidence has been very helpful.

The fifth item on our list of topics is changes to apparent insolvency. Which of our witnesses will tackle this subject?

Bryce Findlay: Why not scrap the requirement for apparent insolvency? As far as I am aware, there is no requirement in England to prove that one is apparently insolvent. I believe that Nicholas Grier referred to the differences between Scotland and England and wondered whether there would be a mass migration of entrepreneurs. However, the systems in the two countries have always been different, and the bill will incorporate that difference if it includes provisions on apparent insolvency.

Christine May: I am sorry, convener. I think that we need someone to explain apparent insolvency to us.

The Convener: I wonder whether Nicholas Grier can take us through the matter. I might have an interest in it if my wife orders anything more from QVC.

Christine May: That must be a Scottish National Party thing, because Margo MacDonald does it as well.

Nicholas Grier: Apparent insolvency is referred to in the Bankruptcy (Scotland) Act 1985. A person can be made apparently insolvent in various ways, the commonest of which is a failure to pay £750 within three weeks of being required to do so. Other ways include the failure to pay a charge after the courts issue a decree; indeed, there are about 14 different methods that one might say are not easily understood by the man in the street. If you used the phrase "apparent insolvency", most people would give you a blank look, which is probably why there is no such provision in England. It just confuses matters.

However, the term more or less refers to any method of establishing insolvency, although it does not necessarily mean that the person in question is insolvent. For example, they could have plenty of assets but just have a cash-flow problem. In such cases, they could be classed as apparently insolvent and sequestrated.

Christine May: So the suggestion that we scrap the provision altogether is not as far-fetched as it might originally sound.

Bryce Findlay: I would say that such a proposal would be fairly radical in Scotland.

The Convener: Is the general view that we should scrap apparent insolvency? Do the witnesses have any strong views one way or the other?

Shona Maxwell: The Executive has talked about dealing with bankruptcy in a way that allows people to get back on their feet. That is all very well, but people might have taken five or six years to become bankrupt because of apparent insolvency. The issues simply do not tie in. If the Executive wants to make it easier for people to get back on their feet and to make some progress with their lives, why make them wait for as long as it takes for a charge for payment to be served? Nothing in the law says that once a creditor has been to court he or she has to serve a charge for payment within a year. These people could be waiting a long time. Citizens advice bureaux have cabinets full of files on people who are waiting to go bankrupt. They have no income, no assets and no other way of getting out of debt; they cannot become bankrupt because no creditor will take enough stuff to make them apparently insolvent. Because creditors will not serve a charge for payment, the people who owe the money are left in limbo for years.

The Convener: Is abolishing apparent insolvency the right thing to do?

15:00

Shona Maxwell: Definitely. If it is not abolished, the system should at least be made easier.

Brenda Tamburrini: Shona Maxwell spoke about citizens advice bureaux having cabinets full of files on people who are waiting for sequestration. In Easterhouse, we have clients who have very little money, but not many of them are waiting for sequestration—most of them opt to try to pay something. I had an example of that last week. I spoke to a client who receives jobseekers allowance and whose only income is £55.65 a week. He pays £5 of that towards his debts. Sequestration should be an option, but not everybody will jump on the bandwagon to be sequestrated.

Nicholas Grier: Debtors can sequestrate themselves; that is not impossible. They can apply for sequestration just like anyone else. The option is available to them, but they may not necessarily want to take it up.

Margaret Burgess: I agree that debtors can apply for sequestration if they are apparently insolvent. I had not thought of anything as radical as abolishing the idea of apparent insolvency altogether, but it is an interesting suggestion. However, issuing a charge for council tax arrears that are owed to the local authority after a summary warrant has been served would let many people become apparently insolvent, which would allow them to take the bankruptcy route if that was the best option for them. At present, many people cannot apply for sequestration, because they cannot demonstrate apparent insolvency.

The Convener: So CAS is in favour of abolishing—

Margaret Burgess: I cannot speak on behalf of CAS, because we have not considered that option. We are in favour of the proposed changes to make apparent insolvency easier; we are in favour of anything that makes it easier for people to declare themselves bankrupt if they have no other option.

Brenda Tamburrini: Many clients who want to declare themselves bankrupt do not have council tax debts, so they would still be unable to go for sequestration.

Susan Deacon: At the risk of repeating myself, I will repeat a comment that I made a minute ago. The enormous value that the witnesses bring to the discussion is their day-to-day experience of the realities of what bankruptcy means for people across Scotland. From the body language of my colleagues, I see that this has been a steep learning curve for us—and none of us is daft. The terminology is new to many of us.

If I am on my own here, convener, you should say so. Our approach to the discussion and the structure of the agenda takes as its starting point the technical provisions of the bill. I repeat my earlier plea: when witnesses engage with the committee on the subject of bankruptcy, we should take as our starting point the practical realities of the individual experience. Speaking personally, I feel that that would be an easier route into the subject for some of us. After we have discussed the individual experience, we can come to the provisions in the bill and what they are designed to achieve. I feel that the agenda items could have been in a different order.

Christine May: I reached the limit of my knowledge at the end of item 4 on the list. I am really struggling here.

The Convener: Perhaps you could give us a layman's description of apparent insolvency or explain to us what impact it has on an individual. What would abolishing apparent insolvency mean in layman's terms? I think—

Susan Deacon: With respect, convener, that is not what I was asking. We have that information and we can continue to deal with it. Not for the first time, I am trying to ask questions slightly differently from how the committee meeting has been set up.

When witnesses are relating experiences to us, perhaps they can do so from the perspective of the individual and what he or she is going through. The various provisions of the bill can be woven into such a discussion. The problem is more with how we ask the questions than with how the witnesses answer them. I am making a plea for people to answer our questions slightly differently.

The Convener: Can CAS answer our questions in such a manner?

Margaret Burgess: We could take a file from the cabinet of apparent insolvencies. The person on that file might have debts to eight different creditors, including the local authority for council tax arrears. They could have debts of £20,000 or £30,000 or maybe less. The debtor cannot pay those debts. They might not have sufficient income. They cannot go into the debt arrangement scheme, they cannot go down the bankruptcy route because of apparent insolvency, and they do not have income for a trust deed. They are left in limbo. Letters from debt collection agencies for eight different creditors pile up every day. They cannot deal with the stress.

In those circumstances, the best route might be bankruptcy, as that would provide debt relief and, after three years—the bill would change the period to one year—people would be able to get on with their lives again. However, people who are in that situation cannot go down the bankruptcy route because, without a piece of paper stating that they are apparently insolvent, they cannot petition for their own bankruptcy. They cannot say, "I cannot pay the debts, so let someone else take over my finances for three years and I will then be able to get on with my life." As that option is not available,

such people are left in a situation—which can last for years or even for ever—in which creditors continually write to them and phone them at home and, if they are in employment, at their work. They have no way out.

We need to ease that situation by changing or abolishing the law on apparent insolvency. Such a change would be of real advantage to some people, as it would enable them to get on with their lives again.

Does that make things clearer?

Karen Gillon (Clydesdale) (Lab): Slightly. Like Susan Deacon, I am on an incredibly steep learning curve for much of the subject matter. Why do people in that situation find that they cannot say that they are apparently insolvent? I do not understand that.

Margaret Burgess: They need a piece of paper to that effect from a creditor. However, if the creditor recognises that taking the debtor to court will be a waste of money because the debtor will ultimately end up in bankruptcy, the creditor might continue to send debt collectors to get the money. Where a summary warrant has been issued for council tax debt, the debtor is not allowed to have the piece of paper that is required to be submitted in a petition for bankruptcy. Such debtors are left in limbo and they continue to be pursued for all their debts. The pursuit might eventually stop, but they are never relieved of the debts. They continue to receive paperwork through the door from all eight creditors—some people have 33 creditors—so the effect keeps multiplying. You can see how that might affect somebody's life.

Karen Gillon: Would the bill sort out the problem?

Margaret Burgess: The changes to apparent insolvency would help people who cannot currently obtain that piece of paper. Any such change would be an improvement. The bill contains some provisions that would help those people.

Karen Gillon: So the bill is a step in the right direction but perhaps does not go far enough.

Shona Maxwell: For those who have not worked on the issue previously, I should explain that a debtor needs to be issued with a charge for payment before petitioning for bankruptcy. However, whether that piece of paper is given to the debtor is entirely up to the creditor. The difficulty is that the creditor is under no requirement to issue that charge for payment after a certain length of time. The debtor might be trying to get relief from all his debt, but whether he is able to go down the road of bankruptcy is entirely up to his creditors. Unlike in England, where debtors can just decide to petition for bankruptcy, debtors in Scotland need to wait for that piece of paper, which is issued by creditors.

Karen Gillon: Why do creditors not issue that piece of paper? Do they think that they will not get back the money to which they think they are entitled—or to which they are entitled—which is money that the debtor cannot pay? Do creditors spend more money trying to get that money back?

Shona Maxwell: They keep charging interest.

Karen Gillon: They might keep charging interest, but I assume that they also need to employ someone to continue to try to collect that money.

Brenda Tamburrini: An example of what happens was mentioned in our earlier discussion about door-to-door collectors, who most clients agree are quite friendly. As people are more apt to give money to a debt collector who comes to their door, creditors tend not to start a court action because they hope that, that way, they will receive a larger proportion of any surplus funds that the debtor has. Creditors are interested only in receiving their own money back; they are not interested in whether other creditors receive theirs. That is why creditors do not take official action.

The Convener: I see that two or three other panel members want to respond, but I need to watch our time as there are a couple of other issues that we need to discuss.

Bryan Jackson: In my experience, the issue depends on the people's agenda. In response to Karen Gillon's question about why creditors try to collect the debt rather than take the debtor all the way through to bankruptcy, I suggest that creditors kid themselves that they will eventually get the money back. They will not make the debtor bankrupt because they know that, if they do, they will get nothing. Instead, they just spend more time getting nothing.

Another misconception is that debtors do not want to pay. They may have reached their current situation for a variety of reasons but, in my experience, once they get into that situation most debtors want to pay back their debts.

If a debtor cannot pay, what purpose do the apparent insolvency rules serve? Perhaps abolishing them entirely is a bit too radical—I know that Bryce Findlay threw that in just to be controversial—but the system must be relaxed in a fairly material way so that it is not just creditor led. At present, people do not have the rights to get out of the situation. When somebody cannot, rather than will not, pay, it is in creditors' interests to call it a day, whether they appreciate that or not.

Bryce Findlay: I was going to say most of what Bryan Jackson said. I add that in a no income, no asset case a system could operate whereby

accredited debt advisers confirm the position, an application is made to court and creditors are given 12 months in which to raise legal action of some sort to bankruptcy. If creditors do not do that, the individual can apply for his bankruptcy.

Brenda Tamburrini: I do not like the proposal of 12 months.

Bryce Findlay: Okay—it will be the next day.

Shiona Baird: Is there a difference between a personal bankruptcy and a business bankruptcy? In both cases, creditors are concerned about the amount of money that they will obtain, but I know from my experience in business that creditors are even more concerned about business bankruptcy, because they end up with very little as a result of the preferred—what is the term?

Nicholas Grier: Preferred creditors.

Shiona Baird: The bank always seems to manage to get in—

Nicholas Grier: That is because the bank has a security over the property.

Shiona Baird: How creditors perceive their chances of getting anything back might be an issue.

Nicholas Grier: That is probably true. As was said, the thing about making someone who has no income and no assets bankrupt is that, frankly, creditors will not receive any money anyway. A creditor who keeps badgering someone might get something, although it will take longer to get nothing, as Bryan Jackson succinctly put it. A distinction is drawn. People who have businesses are not generally in the no income, no assets group anyway, so they do not form part of the discussion. They are not the people for whom we are trying to find a solution.

The Convener: I will call Bryan Jackson, but I need to watch my time.

Bryan Jackson: I will quickly confirm what was said. When a business is involved, creditors normally petition for sequestration, usually because they mistakenly believe that they will receive a dividend.

Patricia Sproul: I reiterate that it always confuses me when creditors do not listen to money advisers who say clearly that they have no chance of getting their money, and spend more money on pursuing a debt and passing it on. Some way of making creditors listen to money advisers would be useful.

The Convener: We have had a fairly good discussion, which has introduced me and other committee members to an entirely new concept. As we reach technical issues in the bill, Nicholas Grier will give us a briefing. The subject is very technical.

Christine May: I have more questions, which arise from what I have heard. I am not sure whether this forum is the correct place in which to ask them, but I would like another go at the issue.

The Convener: I emphasise that the purpose of today's meeting is to highlight issues that need to be addressed and not to deal with them exhaustively—that will be done when we take formal written and oral evidence.

We move on to items 6 and 7 on the list—on money attachment and land attachment—which are both about diligence. There is enough commonality on the diligence aspect for us to take them together. Ann Wood has comments on diligence.

Ann Wood: As an enforcement or sheriff officer firm, we welcome much of the bill. However, we have reservations about money attachment and particularly about the practicalities of its enforcement. The bill suggests that money attachment should be undertaken only between 8 am and 8 pm, but taking money out of businesses, clubs, pubs or whatever during those hours would perhaps be impractical, although the bill provides the opportunity to apply for an exceptional time allotment.

Arrangements could place at risk officers and witnesses—every officer must take a witness to the execution of a diligence. When there is any risk to officers or the public in the execution of a diligence, the officers will generally have a police presence with them. That can give rise to practical problems if it is done late in the evening or in the early hours of the morning in pubs or clubs, for example. At those times, policing is at its highest level in the community, as the police try to maintain general law and order.

The practicalities of enforcing diligence have not yet been thought through properly. The issue is not the diligence per se; the issue is the procedural difficulties in enforcing diligence. As officers of court, we are legally obliged to carry out diligence as instructed by, for example, the solicitor involved. There are dangers and risks. The practicalities have not yet been thought through.

15:15

The Convener: Enforcement is covered in part 3 of the bill and diligence is covered in part 4. Both parts will be relevant to what you are saying, and it is helpful that you have highlighted the issue.

Ann Wood: We would be happy to sit down and consider how the bill could include a framework that allowed diligence to be executed practically and without additional cost to the public purse for policing.

The Convener: It would be helpful if you could include the details of your ideas in written evidence to the committee.

Ann Wood: Absolutely.

Pauline Allan: I would like clarification on a slightly different aspect of money attachment—personal searches. The bill refers to searches on property, but there is no specific exclusion of personal searches. When the Scottish Law Commission responded to the consultation it highlighted such an exclusion.

The Convener: I presume that you think the bill should exclude personal searches.

Pauline Allan: Yes, it should.

The Convener: I notice that Jemiel Benison thinks not.

Jemiel Benison: No, that is not what I think: the bill should exclude personal searches. Apart from any other reason, personal safety issues would arise for people such as those at Stirling Park if they have to do body searches. If searches are not excluded, we would move into a quasi-criminal area, and we would do not want to do that.

Ann Wood: There would also be issues about who would be involved.

The Convener: It is important to highlight such issues.

Ann Wood: This also has to do with the practicality of enforcement. As I say, that has not yet been fully considered.

The Convener: I do not want to go into too much detail today, but it is helpful that you have highlighted the issues. It would be helpful if you could include your ideas and proposals in written evidence.

Murdo Fraser: I want to ask about land attachment. The measure in the bill seems rather draconian, because it gives the creditor of a relatively small sum of money the right to sell somebody's house. I am interested to hear people's views on the measure's proportionality. I see lots of interest in the question already.

Adrian Stalker: Yes—I have been keeping my powder dry for just this issue. The purpose of part 4 is to replace adjudication for debt with land attachment. Adjudication for debt is a cumbersome and expensive measure; it is impracticable. The bill would replace it with a measure that could, indeed, reasonably be described as draconian. The new measure would be much easier to use and it could be used against debtors for relatively low sums of money—as low as £1,500.

The first issue that concerns me is this: I am not sure what thought, if any, has been given to how the measure relates to the Executive's and the Parliament's commitments to homeless people. There have been policy and legislative commitments to alleviate homelessness, to give homeless people additional rights and to make resources available to local authorities to deal with homeless people. However, if the measure in the bill becomes law, we will create a new homelessness stream, because lots of people will become homeless as a result of land attachment and sale following land attachment. That, in turn, will cause an increase in homelessness applications to local authorities, and an increase in the pressure on public resources, such as the number of houses that are available for letting.

Also, it is appropriate to make a comparison between land attachment and the other circumstances in which people can be put out of their houses because they owe money, such as when their house is being repossessed to pay off mortgage debt or because they have not paid their rent to a landlord. It seems to be a lot more difficult to put somebody out who owes money than it would be to put out a person in relation to land attachment. I am not sure what policy considerations dictate that it should be a lot easier for someone who holds a land attachment to put somebody out than it is for a landlord who is owed rent arrears or someone who has a mortgage security to do so.

Consider the tests that a sheriff has to apply when he is deciding whether to grant or refuse a land attachment order. First, the sheriff must not grant the order if he thinks that it would cause undue hardship. In that regard, section 87 lists various things that the sheriff has to take into consideration before he grants a warrant for sale in relation to a dwelling house. Those considerations are quite restricted. Usually, the test relating to putting people out of their house is that the action must be "reasonable" in all the circumstances. If a sheriff is asked to grant an order against someone who owes rent arrears, or if someone applies to suspend the right of a bank to repossess their house, the test is whether it is reasonable to grant the order. In essence, that means that the court can take anything into consideration, such as the illnesses that have been suffered by the debtor, the fact that they have children, the fact that there is mental and physical disability in the household and so on. Further—

The Convener: I am conscious of the time.

Adrian Stalker: Just one more point.

The Convener: You have certainly flagged up the issue.

Adrian Stalker: We have already talked today about people coming to see us at the last minute. One of the things that scares me about the

provisions is that there appears to be no way in at the last minute. About two thirds of the people who come to see me do so after the process has ended in court, just before they get put out of their house. It is always possible to get back in somehow. With these provisions, however, I see no way to get back in. After the process has ended, and leading up to the point at which the eviction takes place, there is no way back in.

The Convener: Land attachment is a new measure. Are you against land attachment in principle or are your concerns to do with the way in which it is introduced in the bill?

Adrian Stalker: I am not against it in principle, but Shelter strongly favours an exception being made for dwelling houses, which is to say people's principal homes.

Susan Deacon: As well as touching on a pertinent issue of substance, Adrian Stalker has raised an interesting question of process and the connectedness of policy and thinking. Given Shelter's particular significance as a player in this field, can you indicate how the Executive involved Shelter and other experts in earlier discussions and previous consultation processes to ensure that the connections between housing and homelessness policy and the provisions in the bill were properly addressed?

Adrian Stalker: I was not involved in that process, but I know that, like everyone else who had an interest, we responded to the consultation. However, I am not aware of our being asked whether the bill connected to anything else.

The Convener: Could you address that in your written evidence to us? That is an important aspect of this part of the bill.

Adrian Stalker: I will do that.

The Convener: Thanks. Jemiel Benison, would you like to add something?

Jemiel Benison: Interestingly, Murdo Fraser chose the right word when he said "draconian". The land attachment scheme is the single most draconian proposal in the bill. It is interesting that somebody can be chucked out of a house for owing £1,501 and benefit the creditor to the tune of only £500. It is also interesting that under the Debt Arrangement and Attachment (Scotland) Act 2002, a house on wheels—a caravan—that you rent or own is exempt. Is the message that people should have a house that is on wheels, but not one that is attached to land? That is fairly straightforward. The current policy is to exempt domestic property, which works. That is the easy way to do it. That does not fall foul of the principle of universal attachability. That principle is illogical, but it is not what we have: we have universal attachability with exceptions. Domestic property and occupied dwelling houses should be the exception.

The Convener: I am getting the message that this part of the bill needs to be closely examined. Indeed, everybody round the table is nodding. We will obviously go into it in more detail later, but the clear message is that a lot of work needs to be done.

Christine May: I am showing my ignorance, but I had no idea that personal body searches might be involved in recovering money. Some written evidence about that would be welcome.

The Convener: Absolutely. Are there any other points on diligence and land or money attachment? If not, we will deal with other issues. I will be fairly strict because of the time that we have left. Does anyone have any burning issue to discuss that cannot wait for the written versions of the witnesses' oral evidence? If not, I say that that session was extremely helpful in flagging up several important issues. No doubt there will be many others as we progress with the bill. We are beginning to work out the implications of some of its technical issues and terminology.

I thank everybody, and I encourage the witnesses to submit their written evidence. Most of you will be back at some stage to give us further oral evidence.

15:27

Meeting suspended.

15:37

On resuming—

The Convener: We now move to the second panel. We have with us Euan Wallace and Jim Freer. In this part of the meeting we are considering bankruptcy from the other end of the spectrum and will hear the experience of people who have been through the bankruptcy system. This evidence session will be less structured. We thought that we could have a fairly free-flowing discussion with the witnesses. Given the number of people on our previous panel, we had to list the items to discuss to ensure that we got through the business. I am sure that the witnesses will manage without formal structures. Will you kick off, Jim, before I ask Euan to come in?

Jim Freer: Certainly. You had a fair discussion about apparent insolvency, which comes before bankruptcy proceedings take place. Prior to the Bankruptcy (Scotland) Act 1993, if someone who was self-petitioning was in the course of trade or business they could make a declaration on the petition that they could not pay their creditors in the ordinary course of business. Prior to 1993, the

other route open was a trust deed conversion. The 1993 act was a knee-jerk reaction to the cost to the public purse of trust deed conversions into bankruptcy. At the last minute, the Law Society of Scotland lobbied the Parliament to alter apparent insolvency. It applied a self-centred view and closed the door. A debtor cannot apply for bankruptcy until someone has taken specific action. I have counselled a number of debtors who are desperate to get the load of debt off their backs and get on with their lives, but cannot, because they cannot prove apparent insolvency.

In England and Wales, people make a self-declaration that their debt exceeds their assets. That is blatant on the form that a debtor has to present to the court, because the debtor lists his liabilities and assets. It does not take a rocket scientist to see from that that someone is insolvent. I see no need for the current requirement to prove apparent insolvency by means of an expired charge for payment. A decree itself is not sufficient, nor is a summary warrant. There must be an expired charge for payment or a poinding schedule with items on it. The new bill has modified that so that the sheriff officer will issue a nil schedule—but will he? Will he turn up if he thinks that there will be nil and that he will perhaps not get paid, or the creditor will not be able to pay up? If apparent insolvency was thrown out or if it became possible to make a self-declaration through a debtor's petition, that would be a big step forward.

The Convener: I ask the adviser whether any other country has self-declaration.

Nicholas Grier: Texas has self-declaration. Someone there can go in with a statement of their assets and liabilities and become bankrupt just like that. The cost of credit in Texas is horrendous.

Jim Freer: Yes, but in Texas they are allowed to keep their homestead and a rifle or shotgun. That could be used against creditors or on themselves.

The Convener: I take it that you are not suggesting that we follow that example.

Jim Freer: No.

The Convener: Euan, can you tell us your experience?

Euan Wallace: I preface my remarks with a quote: "Just because you have a past doesn't mean to say that you shouldn't have a future." That is perhaps taken slightly out of context from a radio broadcast. I heard it said by none other than David Trimble, talking about the members of Sinn Fein, who are part of the non-functioning Northern Ireland Assembly. However, it seems to me that the sentiment is relevant to debt and bankruptcy.

I was interested to hear the earlier comments and notice the vested interests of the insolvency practitioners, particularly Bryan Jackson, who suggested that the law in Scotland should be different from that in England and that Scotland should continue with the three-year period for getting a discharge. In England, a discharge can now be obtained within 12 months. I cannot think of a single reason why debtors in Scotland should be treated differently from those in England and Wales.

What was not mentioned at all in the earlier evidence is the fact that, to all intents and purposes, bankruptcy is like having a criminal record; it stays with someone for life. I have been discharged from bankruptcy for about two years. Just six weeks ago I was trying to organise a remortgage of my property. I scanned down a list of questions that I had to answer, one of which was, "Have you ever been declared bankrupt or entered into a formal arrangement with your creditors?". If the answer to that question is yes, 95 per cent of the mainstream lenders in the marketplace will simply pass your form into the bin.

That does not necessarily mean that someone will not get a mortgage two or five years out from a discharge, but it does mean that they are looking at a specialist lender who will start talking from a minimum of 3 percentage points above the going mortgage rate. Likewise, a discharged bankrupt cannot get a credit card. Insolvency practitioners do not, of course, mention that. Mine glibly said to me, "Well, you don't need to worry. After six years, Experian and the other credit reference agencies expunge any reference to your bankruptcy." I am the ripe old age of 59 and six years will take me beyond retirement age. From the moment that someone becomes bankrupt, they can forget getting any normal method of credit, such as credit cards, even after they are discharged.

15:45

I have resolved not to use credit cards ever again, if I can avoid it. We live in an age of electronic gadgets and everybody sitting at home going online; however, for someone who has been bankrupt, the process of doing something very simple—such as ordering an airline ticket from easyJet online—immediately comes to a stop because they do not have a credit or debit card. Getting a bank account is also impossible for a bankrupt or a discharged bankrupt. Of all the banks in the high street, only two banks will deal with discharged bankrupts and offer them an account: one is the Co-operative Bank and the other is the Nationwide Building Society. I have been able to find no other bank that will touch a discharged bankrupt.

I see nothing in the bill that attempts to address that. Everybody talks about whether it is right that

someone should get a discharge after a year or three years. I am saying that, even if someone gets a discharge after a year, how the credit reference agencies, the banks and other lenders then treat them is just as important. In the case of a bank, if someone answers yes to the question of whether they have been bankrupt, that effectively stands for a lifetime. It has been suggested to me that an easy way to get around that would be to tell a lie, perhaps after six years. Is that what we are saying? For the credit reference agencies, the minimum period of six years stands, whether someone gets their discharge after one year or after three years.

I would have liked to see something in the bill that said that, if someone is discharged within a year, that gives them some form of absolution from their debt. If the premise is that after they get their discharge they start with a clean sheet of paper, that is precisely what they should be able to do: start with a clean sheet of paper and not have to wait for some non-regulated, non-statutory body such as a credit reference agency to expunge their record.

I will stop there, in case anybody wants to come back at me.

The Convener: That has been very helpful. I want to pursue the point about bank accounts, to be absolutely clear. You say that, with the exceptions of the Co-operative Bank and the Nationwide Building Society, no bank will allow you to open an account, even if that account is in surplus.

Euan Wallace: Correct.

The Convener: I can understand a bank not allowing you an overdraft facility—although I am not saying that I agree with that—but to say that you are not allowed to open an account—

Euan Wallace: It is even worse than that. About a year after I was declared bankrupt, my son, who works in London, decided that he wanted to open a second bank account and went to one of the major high-street banks. Because he had lived at his previous address for only two and a half years, the bank asked him to cite his address prior to that. He cited his home address, which the bank fed into its online terminal. The record showed his home address—our address—and he was refused an account on the basis of just the address. He took the bank to task about that and managed to get over the problem, but that is the kind of practical difficulty that you have obviously not heard about.

Of course, the insolvency practitioners in Scotland do not want to shorten the period from three years to one year for the simple reason that that is how they earn their money, and that would cut off two years of fees. I can illustrate that in my own case. I offered the bank that sequestrated me a deal—£40,000, payable over three years, if it did not sequestrate me. It refused to accept that because it thought that by sequestrating me it would get more. My counter to that was that, if it sequestrated me, it would get nothing. Three years down the track, having sequestrated me, the bank got precisely nothing. The £35,000 that it ingathered through my wife managing to buy out my equity in our house was entirely consumed—every last penny of it and more—in the fees that the insolvency practitioner charged. No one can tell me that insolvency practitioners do not have a vested interest in continuing the period to discharge at three years, as it is in Scotland, rather than setting it at one year, as it is in England.

The Convener: In the earlier evidence-taking session, we heard a lot about synchronisation of income repayment with the discharge period. That sounded quite sensible to me. Are you suggesting that the discharge period—whether it be one year or three years—should be synchronised with the six-year benchmark, after which references are cleared?

Euan Wallace: Absolutely.

The Convener: When someone is discharged, they should be discharged in every sense.

Euan Wallace: Yes. It goes back to my comment that the fact that someone has a past should not mean that they do not have a future.

Nicholas Grier: There is a legal point to this. In England, someone's debts prescribe after six years. That is why they have to wait for six years.

The Convener: What does "prescribe" mean?

Nicholas Grier: It means that the debts disappear from the record. Up here, that normally takes five years, rather than six. For Euan Wallace's suggestion to be taken up, the credit reference agencies would need to be covered by the bill. There might be difficulties with that happening south of the border.

The Convener: That is another issue that we need to check out. I suspect that such a change to the legislation would be a reserved matter.

Nicholas Grier: I certainly think that it would.

The Convener: That does not prevent our making a recommendation for a kind of reverse Sewel motion. We should remember that parallel legislation that touches on the bill is going through the House of Commons. If we decide that we want to make a recommendation in our report, we are free to do so.

Euan Wallace: What I am saying is significant if part of the bill's raison d'être is to encourage risk takers and entrepreneurs. I started my own

business 30 years ago and would like to start one again, although I would never do so without the protection of limited liability. Bryan Jackson said that there is nothing to prevent a bankrupt from starting up in business the next day. There may not be in law, but there is in practical terms. If as a bankrupt you try to open a bank account for your business, you will be politely shown the door—if the bank does not phone for the men in white coats to come and take you away. If one of the bill's objectives is to encourage entrepreneurialism and people restarting in business, it will be a failure from day 1 in that regard.

The Convener: We should definitely have a representative of the Scottish clearing banks give us evidence on the bill at some point.

Susan Deacon: That links up with my intention to ask about the role of the banks. We must allow them to tell us directly what their practice is. Mr Wallace, you say that the banks refused to let you open an account. Were you given any indication, either verbally or in writing, that that is a matter of blanket policy, or was it simply your individual experience, which I do not question for a moment?

Euan Wallace: My first experience of it was when I went down to my local branch of the Clydesdale Bank in Milngavie. I had a live deposit account with the bank, which I had held jointly with my wife and from which my name had been removed. I wanted to get a deposit account of my own, but I was told that, because I was a bankrupt, the bank would not give me one. Someone then directed me to the British Bankers Association. The information is freely available on its website that the only two organisations in the United Kingdom that will offer immediately discharged bankrupts accounts are the Co-operative Bank and the Nationwide Building Society.

The Convener: Euan, would you like to comment on that? I am sorry—I meant to say Jim.

Jim Freer: I do not plan to change my name.

Because of my experience of trying to get bank accounts when I was bankrupted, I normally advise individuals to open, but leave dormant, an account that is ready to operate when their bankruptcy starts, so that their wages can be paid into that. Ninety-nine per cent of people are paid by bank giro transfer. That is where the clearing banks do not accommodate debtors. The law clearly states that debtors' income is their own and it should therefore go into their own account, but they are not being accommodated. I tell debtors to open an account, but not to use it. Having £5 or £10 in that account will be fine. Some banks will request £50 to open an account, but if they do, £50 can be put into it and £40 can be taken back out. A small account will then exist into which the person can put their wages if they have a job, which is not always the case.

I got it in writing that the banks would give me a cheque book, but they would not give me a cheque card with it. It was therefore as much use as a chocolate kettle. Nobody will take a cheque from a person unless that person has a cheque card. Having a cheque book was therefore a waste of time.

Over the years, I have approached the credit reference agencies, which keep information for eight years from the date of sequestration. Information is still flagged up five years after a person's discharge. Back in the 1990s, I argued with the credit reference agencies that debtors were being flagged up even though, under the Rehabilitation of Offenders Act 1974, criminals' records were being expunged after seven years and references to their having been in prison were then not allowed. Anybody could flag up information on a credit reference, and the system was blocking people from getting on with their lives. They would answer that they had a duty to the people who paid them—their members—to let them know that the person in question was a bad risk. I would ask, "How can they be a bad risk if they don't owe anybody any money?" When a person is discharged, they do not owe anybody any money and are the best risk in the book.

Murdo Fraser: I want to ask about a slightly different matter. Both of you have talked about the bill in general, but do any parts of the bill particularly concern you? For example, as a result of your experience, are you particularly concerned about land attachment, which we discussed earlier?

Euan Wallace: I certainly am. Earlier, somebody made a point that I would have made, which was interesting. Someone may have an unsecured bank overdraft of £1,500 for example, fall out with their bank for whatever reason, and the bank may then call in that overdraft. Under the proposed legislation, if the person does not have the means to repay the money, the bank can effectively and quickly, first by an inhibition and then by a land attachment, get security over the person's heritable property—their home. That security can be obtained for an unsecured bank debt or car loan or whatever. Much stronger powers of sale will be granted to such creditors, who could put people out on the street. On the day after the part of the bill in question is enacted, how many people with small personal overdrafts or unsecured personal loans of £5,000 or £10,000 that they have taken out to buy a new car will be put in a position in which the creditor can become a secure creditor and put them out of their house without too much trouble? I have no particular problem with land attachment against commercial business premises because such a system would be less likely to be open to abuse. However, for sole traders who are not incorporated, there will be an

open book for the Inland Revenue, HM Customs and Excise or any of their day-to-day business accounts to get an attachment against their house if there is a dispute, and that seems to me to be iniquitous. As far as I am aware, there is no parallel approach in England and Wales. Why should such an approach be taken in Scotland?

16:00

Jim Freer: I concur. I am a great believer in the family home not being part of any bankruptcy proceedings at all—I have espoused that view for the past 15 years. People do not lend money on the basis that they will take the house off a person. My house was taken from me in 1990 and I was basically left on the street. I did not qualify as homeless and had nowhere to go. I know what it is like; I am talking from the coalface. There is no question about it: the family home must be exempt from land attachment. Lenders can use other forms of diligence; they should not be able to attack the family home.

Christine May: Mr Freer, when you first spoke, you mentioned apparent insolvency and advocated a system under which it would almost be possible to walk in off the street—although you did not specify that—and self-declare. How would you deal with the ability of somebody else to argue against that declaration on the ground that the person making it might not be telling the whole truth? I assume that you are not suggesting that an application could be made and granted without allowing someone else the right to argue against it.

Jim Freer: In all my experience of dealing with debtors, I have yet to come across somebody who wished bankruptcy on themselves falsely, although it is possible that those with whom I have dealt were more genuine than most. There is nothing to be gained from falsely declaring oneself bankrupt, not even in a divorce.

Christine May: I had a further question for Mr Wallace, but it has now gone out of my head. I apologise. Perhaps I will come back to it if I think of it again, convener.

Shiona Baird: We are learning a lot about bankruptcy. I declare that I am as ignorant about it as all the other committee members. Was either of you aware of the implications of going bankrupt?

Jim Freer: One of the reasons that I got involved in giving free advice to debtors was the total lack of advice that was available to me. My solicitor dumped me the night before my petition was to be heard in the local sheriff court, and my accountants had dumped me the day before. When a trustee was appointed, I asked them for help and advice, but all they did was refer me to various pieces of legislation. That was in 1989 and the regime has altered since then, but I spent days at the Mitchell library finding out about personal insolvency and what I could do. I never met my trustee throughout my bankruptcy; I saw only his appointed minions. They would tell me only what I could not do; they would not tell me what I could do and what was available to me.

To a certain extent, that happens today. If a debtor is referred or goes of their own volition to an insolvency practitioner for help and advice, the practitioner will give them a degree of help and advice but, as soon as the debtor signs the trust deed, the practitioner is legally obliged to act for the creditors, so the help and advice cease. Money advisers send debtors to insolvency practitioners with the best of intentions saying that the insolvency practitioners will sort the case out.

Further help and advice should be available to debtors throughout bankruptcy. Debtors come to me before and during bankruptcy because nobody can tell them what they can do. They do not even know whether they would get a mortgage. All sorts of questions arise, but help is not available. There is help up to the point of sequestration and then it stops.

Christine May: I have remembered my question. I thank the convener for giving me my chance.

Mr Wallace—you said that you do not support leaving the discharge period at three years. Are you drawing a distinction between your situation—that of having been in business and wishing to be in business again—and the points that the first panel of witnesses made, which concerned consumer debt?

Euan Wallace: I have difficulty with the proposition that Bryan Jackson floated, which was that 90 per cent of sequestration cases involve personal debt and that a reduction in the discharge period from three years to one year will make people more irresponsible. In my view, the irresponsible people are the lenders who allow consumers to accumulate high levels of debt in the first place. Why should the Government of Scotland cry tears for the banking and credit industry? Only a fraction of 1 per cent of its loan book goes wrong and is totally or partially lost. Even if the figures are correct—that is, if 90 per cent of debt is consumer debt and only 10 per cent is business debt—it is far better to try to encourage entrepreneurs back into business than to feather-bed the banks and the irresponsible people in the credit industry who create the consumer-debt problem in the first place.

An old insolvency practitioner with whom I used to do a lot of work said that good credit control starts not when one has supplied the goods or the service but before that. In other words, if one

assesses people properly, one's debt position will be much better and one's percentage loss will be much smaller. The problem is that it is far too easy for people to get multiple credit cards, store cards and so on. Why should the Government and the Scottish Executive protect people in the credit industry who are taking a commercial risk?

Christine May: So your view is that a one-year discharge should be available because the promotion of entrepreneurship is more important.

Euan Wallace: Yes.

Jim Freer: When I was in business, one took commercial decisions to extend credit to individuals or businesses based on the volume of business from the source, the profit that one took and how much one wanted the business. It is a fact of life that some customers will go down, but that should be built into one's profit factor. The high street moneylenders have built in that fact. If there was no such thing as bad debt, people would not pay the interest rates that they pay—the rates would come down.

There is a wee bit too much leaning towards the poor creditors. There should be a more open door for debtors, who are left with the problems.

The Convener: In considering the bill, we are trying to strike the right balance—that is the key to the successful progress of the bill. The key judgment that we will have to make is to decide where the balance should lie.

As there are no further questions, I thank our two witnesses. It has been a useful session that has flagged up a number of issues that we will need to address.

We move on to item 3. Paper EC/S2/06/1/1 outlines a suggested approach to our consideration of the bill at stage 1. The paper is self-explanatory. I should say, first of all, that the bill is long, technical and complicated. The paper suggests that we take evidence on the bill's four themes in the order in which they appear in the bill. There are 12 sections on diligence; we heard today how important many of them, for example on land attachment, will be. We need to decide whether to take evidence on all 12 sections or to be more selective. I suggest that the sensible way to approach the question is that, instead of deciding today on which of the sections on diligence we need to take oral evidence, we should take that decision once the written evidence has come in and we have reviewed it.

Christine May: It is also likely that some of the matters that will be raised in evidence on other parts of the bill will have a bearing on diligence and might also help to clarify our thinking.

The Convener: Absolutely. The paper is self-explanatory; some of it sets out housekeeping matters, such as delegation of authority to the convener to approve witness expenses. In turning to paragraph 16, I realise that I have skipped an item on the agenda; I will return to it.

The committee must agree the deadline for the end of stage 1, which will be subject to negotiation with the Minister for Parliamentary Business. It will be fairly good going if we manage to complete stage 1 by the summer recess. That is one of the recommendations that are made in paragraph 16.

I will run through the recommendations. The first is that we should decide whether to take oral evidence on all areas of diligence law or to focus our evidence taking on certain sections and to seek written evidence on the remaining ones. I suggest that we decide how to deal with the diligence sections once we have seen written evidence. Given that it must all be submitted by 24 February, we will have time to do that—after all, we will not even get to part 4 until well after February. Is that agreed?

Members *indicated agreement*.

The Convener: The second recommendation is that our oral evidence taking on the other themes should be taken from the witnesses who are listed in paragraphs 7 to 10 of the paper. Is that agreed?

Members *indicated agreement*.

The Convener: We will have to add other names.

Christine May: We will need to ensure that we strike the right balance. I was interested to hear what was said today about a perceived lack of balance.

The Convener: Yes. I think that the Committee of Scottish Clearing Bankers is included.

Christine May: Yes. It is in.

The Convener: The third recommendation contains a small mistake. It says that the preferred timetable for stage 1 of the bill requires us to publish our report

"no sooner than 31 May 2006".

If it is to be compatible with the second paragraph at the top of the page, it should read "by the end of June 2006". [*Interruption.*] I understand that if the stage 1 plenary debate is included in the timetable, we will have to have our report out by the end of May or the beginning of June. It is only fair that we work with the Executive to try to get stage 1, and not just our report, through before the summer recess. Is that agreed?

Members *indicated agreement*.

The Convener: The fourth recommendation is that we should, after each evidence-taking session, consider the issues that emerge from that

evidence. We are about to do that on the evidence that we have heard today. Is that recommendation agreed?

Members *indicated agreement*.

The Convener: The next recommendation is that we should consider in private all drafts of the report. Is that agreed?

Members *indicated agreement*.

The Convener: The London Stock Exchange would go haywire if its members were to hear some of our discussions.

Christine May: I do not think so.

The Convener: The final recommendation is for the committee to delegate to the convener the authority to approve claims for witness expenses. That recommendation may be a bit dubious—is it agreed?

Members *indicated agreement*.

The Convener: We will now return to item 2, which is our consideration of the issues that have emerged from today's evidence-taking session. From the notes that the clerks and our adviser have taken, I suspect that the issues are becoming very clear. I do not suggest that we have already captured all the issues—far from it—but that a range of issues have emerged.

Murdo Fraser: My point is a general one. Today is the first day that Nick Grier has been with us in his role as committee adviser. Much to my regret, some committee members exaggerate my knowledge of the subject and it would do me no harm to have a refresher course on where the law on bankruptcy and diligence stands. Other members might also welcome the suggestion. Perhaps it would be possible to arrange with some urgency an informal briefing with the adviser in which he can brief us on the current law. I was getting rather lost in the discussion on apparent insolvency; I dare say that other members were, too.

16:15

Nicholas Grier: As long as I can examine you afterwards.

The Convener: Is that agreed?

Members *indicated agreement*.

The Convener: The briefing would need to be at a time when members are not caught up in other things.

Susan Deacon: I accept that there are time pressures, but there is also an issue about the quality of our work as well as its quantity. Unless we have an opportunity to reflect on what we have heard to date and what would enable us to explore the issues further, there will continue to be significant limitations on what we will get from evidence session after evidence session. I do not know how that fits with the previous discussion—we are taking items 2 and 3 in reverse order now—but given the importance of such a briefing, and to maximise attendance, that opportunity should be within the scheduled committee meeting time. Thereafter, we can do whatever needs to be done in scheduled evidence-taking meetings.

The Convener: It is difficult for members because they have so many other commitments. I suggest that, rather than take evidence in a oner for the whole bill, which we would not be able to digest, we should have a meeting prior to starting work on each element of the bill, either a week or a fortnight beforehand. We would have a refresher course on the first element before we took evidence on it, and so on. That would make the bill easier to absorb; to try to absorb it all at once would be horrendous. Bankruptcy is a concept that we might understand. There are some meetings before the refresher meetings—if we can call them that—that I suspect we can deal with. In any case, Nicholas Grier will be here to provide us with back-up advice or support.

Shiona Baird: My point is altogether different. Apart from the last two witnesses, what we have heard today has focused very much on personal debt. Do we have any information on the number of business failures in Scotland over what might be considered a relevant period, so that we know what we are dealing with in the business sense from the Enterprise and Culture Committee's point of view?

The Convener: Some good Scottish Parliament information centre briefings have been produced. If you think that some information is missing or you would like more information, I suggest that we request it from SPICe through the clerks, and thereafter circulate it to everybody. I have the SPICe briefings here—I suggest that members read them because they are good and informative. That is why I was able to understand apparent insolvency.

Murdo Fraser: Will you give us a brief explanation?

The Convener: I will do so later, in the bar.

Christine May: That reflects a conversation I had earlier with a couple of colleagues. For most of us, our experience of the subject ends when a constituent comes to us and we hand them over to the money advice people. Some of the things I heard about today—for example, the personal searches to recover money—shocked me. Other issues of personal experience came up. Susan Deacon made a plea for the matter to be made as personal as possible. That would be helpful,

because only if that happens can we get some idea of the scale and the nature of what we are trying to deal with and what it means for individuals, for society and—this is, after all, the Enterprise and Culture Committee—for people's ability to participate in the enterprise life of Scotland.

Susan Deacon: On how we can approach the issue most effectively, we need somehow to get back to first principles. What is the problem that we are trying to solve or that the Executive is trying to solve? That came up in today's discussion.

There are issues about encouraging support and entrepreneurship, and we know that there are growing concerns about the problem of personal debt. I accept that there are many statistics and so on about all those things in the raft of briefing materials that we have received, not only from SPICe, but from external organisations that are now helpfully sending us material with increasing regularity and will no doubt continue to do so. It would be helpful if our various advisers could distil from that something about the nature of the current situation in Scotland with reference to personal debt or the issues about business start-ups and so on, and include any available evidence about how the law affects the number of business start-ups. I hope that that is not asking too much. I would certainly find such information useful.

Nicholas Grier: We will see what we can manage.

The Convener: Okay—we will do that as quickly as we can.

There are two other sets of people from whom we should take evidence. One of the emerging themes, which appears in newspapers' business sections regularly, is what has happened down south following legislative changes. We could invite witnesses from down south—we would have to discuss at a later date who they should be—or go down to talk to them. We should make some effort to find out what has happened there as a result of new legislation. We have heard a lot of reference to what is or is not happening south of the border, particularly in relation to the three-year or one-year discharge period argument. We need to try to find out about all that because it would be informative. I am not saying that we should copy their experience, but it would inform us.

Christine May: I have noticed in the financial pages over the past week that there has been reference to a "CA Magazine" article. I presume that other financial journalists have also written articles because we are now discussing the matter. It would be very helpful to seek the evidence that the convener describes.

The Convener: One of the figures that we saw was that 75 per cent of all personal debt is consumer related—credit cards and the like. I presume that the credit card companies have some kind of umbrella organisation similar to that of the clearing banks. We should invite the credit card people.

In the second set of evidence, points were raised about continual advertising in the form of leaflets posted through people's doors and people getting into debt because credit card companies offer all sorts of deals that appear to be attractive, but at the bottom of the advert it says that the annual percentage rate is 18 per cent. Do members agree to take evidence from the credit card people?

Members *indicated agreement*.

Christine May: It would also be useful to take evidence from businesses on any checking that they do before they accept a request to open an account—a store card account, for example. We heard about folk who have eight creditors, but there are folk who have many more than that because they have accounts here, there and everywhere or because they have bought goods. What sort of checks do creditors do? They might check that the first payment can be met, but how do they satisfy themselves that subsequent payments can be met?

The Convener: Is the recommendation agreed?

Members *indicated agreement*.

The Convener: I hope that everybody is happy that we are moving in the right direction. The bill will bring us a very heavy workload.

Scottish Media Industry

16:24

The Convener: Item 4 is our final agenda item. Members know the background to it. We have heard two sets of evidence from the BBC and we have had meetings with the Office of Communications—Ofcom—on what is happening in public service broadcasting. We have received representations from a number of organisations, such as the National Union of Journalists, about what is happening in the print media, in Scottish television from the Scottish Media Group and on the broad issue of the future of the media industry in Scotland.

We now have to make a strategic decision about what we want to do in this sphere. We do not have the time to do a full-scale inquiry, even if we want to do one. Given the scale of the problem that is emerging—the situation is changing in the print and the televised media—we might want to take more evidence or have more hearings before we decide whether we want to do anything else or whether there is any issue on which we believe we should comment particularly.

Given the representations that have been made—I know that members have been approached by a number of organisations—I have put the item on the agenda so that we could have a brief chat to work out what we want to do. We must be clear about what we will do. There is obviously a lot of concern.

The committee should not get involved in individual redundancy situations or other such matters because that is not the committee's role. However, a pattern of fairly radical change is emerging in the media sector. From an enterprise and culture point of view, that is obviously a matter of concern to the committee.

Christine May: I have to say that I am becoming a little concerned that we are picking up related issues one by one without any clear idea of why we might want to do the work or what outcome we might be looking for. I am reluctant to agree to a hearing on the basis of this request.

Only yesterday I read an item about the changes in news, in the way that people access news and the results for the rolling news channels; for example, the ITV News Channel is now defunct. Two main rolling news channels are left and they are struggling for audience share. Many of us get our news from texts, the internet or some other form of electronic media from which one can get instant updates and extensive background analysis, if that is what one wants.

If we are to do anything at all—I would like more time to consider the matter—the future of the news media in Scotland is something that we should consider. When representatives of Ofcom came to the committee we talked about the future of communications. I have taken up the issue as an individual MSP following the request from the NUJ and I am sure that other members have also done so. At this stage, if we accede to the NUJ's request we will get into the minutiae of employer-employee relations. What will happen when the next such request comes, and the next one? I am more than happy to consider examination of the media. I made a similar comment on a previous occasion.

Murdo Fraser: My biggest concern about the matter goes back to the comment that the convener made about our heavy work schedule. The difficulty would be to try to fit such an investigation into our programme, given our commitments, particularly with the Bankruptcy and Diligence etc (Scotland) Bill.

There is also a danger in focusing on one industry. From time to time there are concerns and job losses in different sectors. The committee must be careful that we do not just respond to a news agenda that says that all of a sudden there is a crisis in a particular sector, so we must investigate it. We must be careful about getting sucked into that sort of approach, particularly given the committee's other current commitments. That is my reservation about what is suggested in the note from the clerk. I might be more relaxed about the matter if we were going to do work that was short and tightly focused.

Susan Deacon: I concur with the comments that have been made. When we investigate such issues we should take a big-picture view of the wide issues, such as the impact on Scottish culture, skills and training and so on. We touched on those matters when we dipped into broadcasting, but we did not do justice to the issues, even those that are specific to broadcasting. Therefore, given the context that we absolutely do not have the time to do justice to the bigger strategic issues that need to be considered, I have a real concern about engaging in an inquiry that we are unable to carry out properly.

16:30

I also share the view that there would be serious issues about the committee's role if we were to allow our agenda to be driven predominantly by issues of ownership and control and of internal industrial relations. I would be concerned if those issues were the starting point for such an inquiry.

Karen Gillon: I have nothing to add to what has been said other than that I concur with the views that have been expressed.

The Convener: I think that we all agree that we should not get involved in individual issues, but the question is whether we might want to consider some media issues at a future date. For example, would it be useful if we asked SPICe to produce for next month a briefing to provide an overview of what is happening in the media and creative industries in Scotland? Once the briefing was circulated to members, we could take an informed decision on whether we could add value in any areas. In other words, as Susan Deacon suggested, that would be a strategic overview rather than a report on individual issues.

Christine May: I would like the briefing to include the effects of the Ofcom review, if possible.

The Convener: The briefing would be on the whole media and creative industry sector. I hope that it will allow us to put individual issues into the context of what is happening in the medium and longer term. We can then decide whether we have the time to carry out an inquiry, and what issues we should consider. Is that a reasonable suggestion?

Members *indicated agreement*.

The Convener: That is the end of our meeting. I look forward to seeing members at 2 o'clock next Tuesday.

Meeting closed at 16:32.

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